

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
744 Broad Street Newark, N. J.

BULLETIN 376

JANUARY 15, 1940

1. REPORT OF CASES INVOLVING NON-PAYMENT OF TAXES OR PENALTIES  
OR OTHER FAILURE TO COMPLY WITH THE TAX LAW, CONDUCTED  
DIRECTLY BY THE DEPARTMENT.

To: D. Frederick Burnett, Commissioner  
From: Emerson A. Tschupp, Attorney

January 4, 1940

Period Covered  
July 1, 1939 to December 31, 1939

SUMMARY

Cases Instituted 23

Disposition:

License or Permit suspended for balance of term	4
Dismissed after charges were served, but before entry of order of sus- pension, after payment of penalty and service charge	9
Awaiting entry of order of dismissal	6
Pending, awaiting hearing	3
Complaint withdrawn by State Tax Department	<u>1</u>
	23

The foregoing 23 cases involved licensees and permittees as set forth below:

State Licensees

Cases Instituted 7

Disposition:

License suspended for balance of term	2
Dismissed after charges were served, but before entry of order of sus- pension, after payment of penalty and service charge	4
Complaint withdrawn by State Tax Department	<u>1</u>
	7

Permittees

Cases Instituted 2

Disposition:

Dismissed after charges were served, but before entry of order of sus- pension, after payment of penalty and service charge	1
Awaiting entry of order of dismissal	<u>1</u>
	2

Municipal Licensees

Cases Instituted

14

Disposition:

License or Permit suspended for balance of term	2
Dismissed after charges were served, but before entry of order of suspension, after payment of penalty and service charge	4
Awaiting entry of order of dismissal	5
Pending, awaiting hearing	3
	14

Respectfully submitted,  
Emerson A. Tschupp,  
Attorney.

2. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED AND PADLOCK GRANTED.

In the Matter of the Seizure on )	Case 5199
January 3, 1939 of a still at )	
16 Quitman Street, in the City of )	ON HEARING
Newark, County of Essex and State )	CONCLUSIONS AND ORDER
of New Jersey. )	
----- )	

Max Shapiro, Esq., Attorney for Binco Holding Co.  
Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

A hearing was held in the above matter on January 31, 1939, at which no one appeared to contest the proceedings. At a supplemental hearing, Milton Binstock, principal stockholder of Binco Holding Co., the owner of 16 Quitman Street, Newark, sought to avoid padlocking of the premises. He admitted that on January 3, 1939 an illicit still was found in the possession of Lillie Banton, the tenant of the second floor apartment and attic.

Binstock testified that he was unaware of its presence until he received notice of the original hearing; that thereafter he spoke with his tenant, who at first denied, but later admitted that she had been operating an illicit still on the premises. He was reluctant to effect her removal because he feared that it would deprive him of an opportunity to collect her arrearage of rent.

Sometime thereafter Binstock left Newark on business and did not return until October 5, 1939. On August 6, 1939, police officers seized another still in the Banton apartment. Binstock says that he did not know about this incident until his lawyer told him about it the day before the instant hearing. Nevertheless, his attitude towards his tenant remains the same. If forced to, he will remove her, otherwise he prefers to let her stay, in the hope that she will eventually pay him the past due rent. Thus, Binstock is actuated not by a desire to aid in the enforcement of the law, but by motives of self-interest. Normally, a reasonably prudent person,

upon discovering Mrs. Banton's second offense, would immediately take steps to evict her. However, Binstock is still prepared to let his tenant remain, if I do nothing about it. He has only himself to blame for having the premises padlocked, since he permitted his financial interests to override a natural impulse to remove a law-breaker.

I find that the illicit still equipment and mash constitute unlawful property, subject to seizure and confiscation.  
R. S. 33:2-2.

Accordingly, it is ORDERED that the seized property be and hereby is forfeited, and that it be retained for the use of hospitals and State, County and municipal institutions or destroyed in whole or in part at the direction of the Commissioner.

It is further ORDERED that the second floor apartment and attic of the dwelling at 16 Quitman Street, City of Newark, being the premises in which the illicit still was found, shall not be used or occupied for any use whatsoever for a period of six (6) months, commencing the 8th day of February, 1940.

D. FREDERICK BURNETT,  
Commissioner.

Dated: January 8, 1940.

SCHEDULE "A"

- 1 - 50 gallon copper cooker
- 1 - 25 gallon copper cooker
- 1 - 10 gallon wooden cooler and copper coil

3. APPELLATE DECISIONS - GRIFFIN v. IESLIN.

JOHN H. GRIFFIN,	)	
Appellant,	)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS
BOROUGH COUNCIL OF THE BOROUGH	)	
OF RUTHERFORD and M. IESLIN,	)	
Respondents.	)	
-----	)	

John H. Griffin, Appellant Pro Se.  
Oliver T. Somerville, Esq., Attorney for Respondent, Borough Council of the Borough of Rutherford.  
Dominick Marconi, Esq., Attorney for Respondent, M. Ieslin.

BY THE COMMISSIONER:

Appellant appeals from the issuance of a plenary retail distribution license for the fiscal year 1938-1939 to respondent, M. Ieslin, for premises located at 1 Morse Avenue, Rutherford.

An ordinance adopted on April 4, 1939 by the Council increased by four the number of plenary retail distribution licenses which might be outstanding in the Borough. Six applications for the four new licenses, including one by Ieslin, were filed. So were written objections to the issuance of any additional licenses. As a result, a public hearing was held on April 28, 1939. Appellant and other objectors appeared and spoke in opposition. After

the objectors had been heard, Councilman Nelson, Chairman of the Police Committee, stated that he had not completed his investigation of the six applicants and was not in a position to make a recommendation at that time and moved that the matter of issuing additional alcoholic beverage licenses be set aside. There was no second to the Councilman's motion. The Council took a recess at 9:10 P.M., reconvened at 9:18 P.M., and adopted a resolution, by a vote of five to one, Councilman Nelson in the negative, granting licenses to Ieslin and three other applicants.

Appellant contends that the license was improperly issued because (1) proper investigation was not made of the premises and character of applicant; (2) the licensed premises are located in a residential section in the same block with a church; (3) the license was granted for premises where a general grocery and confectionery business is conducted; and (4) respondent Ieslin had been convicted of a violation of the Alcoholic Beverage Control Act and hence was not entitled to favorable consideration over other applicants who had not been so convicted.

As to (1): R. S. 33:1-24 (Control Act, Sec. 21) provides, among other things, that it shall be the duty of each issuing authority to investigate applicants and to inspect premises sought to be licensed.

The purpose of such investigation and inspection is to enable the license issuing authority to pass intelligent judgment on the personal fitness of applicants and the suitability of premises sought to be licensed. The extent depends upon the facts in each particular case. For example, the investigation of person and place incident to a new license is necessarily greater in scope and degree than when an old licensee applies for a renewal at the same place. In the latter case, his previous record, good or bad, often speaks more eloquently than any formal repetition of the statutory requisite.

In the instant case, Ieslin had held a limited (permitting only sale of unchilled bottled beer) retail distribution license for the premises in question continuously from 1933 to May 1, 1939, at which time he surrendered said license upon obtaining his plenary (permitting sale of any bottled alcoholic beverage for off-premises consumption - commonly called a package goods store) retail distribution license. Aside from the suspension hereinafter referred to, there is nothing in his record which would indicate that Ieslin is personally unfit or unworthy to hold a license. Since, at the time of the public hearing on April 28, 1939, he was already a licensee, it may be presumed that members of the Borough Council were acquainted with his character and the nature of his premises. Despite the fact that Councilman Nelson was not prepared to make any recommendation on April 28th, the other members of the Borough Council may have been satisfied from their own knowledge of the applicant and his premises that the license in question should be issued. The burden of proof is upon appellant. Under the facts brought out in this record, this burden has not been sustained.

As to (2): Morse Avenue is a residential street but the premises occupied by Ieslin have been operated by him and his family as a grocery and delicatessen store for at least thirty-five years. The church referred to is on Elm Street, a distance of more than one thousand feet from the licensed premises. The statutory minimum is two hundred feet.

As to (3): It does not appear that there is any local requirement of the Borough prohibiting the operation of other mercantile business on the licensed premises. Whether a package goods license should be issued for premises where a general grocery and confectionery business is conducted is primarily within the discretion of the local issuing authority. Such a place would never do for on-premises consumption but there is obviously a vast difference between that and the sale of bottled goods for consumption elsewhere.

As to (4): Approximately two years ago, the limited retail distribution license then held by respondent Ieslin was suspended for three days for selling chilled beer on Sunday in quantities less than 72 fluid ounces. That appears to be the only blot upon his record. Appellant contends that respondent Borough Council should have selected from among the six applicants four whose records were clear. It should be noted that this appeal is not brought by either of the applicants who were turned down on April 28th and there is nothing in the record by which I can determine whether either of the rejected applicants was more or less worthy than Ieslin. Whatever may have been the situation with reference to the rejected applications if they had appealed, it is clear that Ieslin was not mandatorily barred from obtaining a license because of a single violation of the Control Act. As I said in Lewis v. Orange, Bulletin 268, Item 3:

"Appellant cites numerous instances in which I have held that conviction of a violation in disciplinary proceedings would be a sufficient ground for denial of a renewal. Re Juska, Bulletin 116, Item 7; Re Hinchcliffe, Bulletin 171, Item 7; Re Bailey, Bulletin 172, Item 10; Zicherman v. Newark, Bulletin 227, Item 7; Kirschhoff v. Millville, Bulletin 254, Item 8. It would be. But the Board did not refuse. Instead, it renewed. It does not follow that because it may deny, ergo it must deny. The single violation in each case did not necessarily disqualify the licensee. The question as to whether these licenses should be renewed was a matter within the sound discretion of the members of the Municipal Board."

I cannot say that, in granting the license to respondent Ieslin, the Borough Council abused its discretion.

The action of respondent, Borough Council of the Borough of Rutherford, in granting the license to respondent, M. Ieslin, is, therefore, affirmed.

D. FREDERICK BURNETT,  
Commissioner.

Dated: January 9, 1940.

4. REPORT OF DISCIPLINARY PROCEEDINGS AGAINST STATE LICENSEES AND PERMITTEES INSTITUTED BY THE DEPARTMENT

To: D. Frederick Burnett, Commissioner  
 From: Emerson A. Tschupp, Attorney

January 4, 1940

Period Covered  
July 1, 1939 to December 31, 1939

SUMMARY

Cases Instituted 5

Disposition:

Pending		5
Heard, decision reserved	3	
Awaiting hearing	<u>2</u>	
	<u>5</u>	

The foregoing 5 proceedings involved 6 violations as set forth below:

<u>Kind of License</u>	<u>Charge</u>	<u>Disposition</u>
Warehouse Receipts	Sale of warehouse receipts not in possession of licensee and failure to retain possession of warehouse receipts contracted to be sold.	Pending, decision reserved.
Solicitor's Permit	Holding mortgage on chattels at retail licensed premises.	Pending, decision reserved.
State Beverage Distributor's	Interest in retail licensed premises.	Pending, decision reserved.
Solicitor's Permit	Employment by retail licensee.	Pending, awaiting hearing.
Plenary Winery } Plenary Export } Wholesale }	Sale of alcoholic beverages to a consumer.	Pending, awaiting hearing.

Respectfully submitted,

Emerson A. Tschupp  
 Attorney

5. APPELLATE DECISIONS - GRIFFIN v. GRUBER.

JOHN H. GRIFFIN,	)	
	)	
Appellant,	)	
	)	ON APPEAL.
-vs-	)	CONCLUSIONS.
	)	
BOROUGH COUNCIL OF THE BOROUGH	)	
OF RUTHERFORD and JOHN GRUBER,	)	
	)	
Respondents.	)	
-----	)	

John H. Griffin, Pro Se.  
 Oliver T. Somerville, Esq., Attorney for Respondent-Council.  
 W. A. Kipp, Jr., Esq., Attorney for Respondent, Gruber.

BY THE COMMISSIONER:

This appeal, like that of the licensee in the Ieslin case just decided, Griffin v. Rutherford and Ieslin, Bulletin 376, Item 3, is from the issuance, last fiscal year, of a plenary retail distribution license to John Gruber for his grocery and delicatessen store, 88 Park Avenue, in the business section of Rutherford.

Gruber was one of the four applicants who received a plenary retail distribution license from the Rutherford Borough Council on April 28, 1939, as set forth in that case; so, too, he, when obtaining such license, had theretofore been holder of a limited retail distribution license at his premises for several years and had, back in 1937, while holding that limited type of license, been found guilty of selling chilled beer on a Sunday in quantities of less than seventy-two fluid ounces, and received a three-day suspension of license.

Appellant here presses the same contentions which he urged in the Ieslin case, except that he raises no question as to the nature of the locality in which Gruber is operating.

All these contentions have been disposed of adversely to appellant for the reasons set forth in the Ieslin case.

The action of the Rutherford Borough Council in granting the said plenary retail distribution license to Gruber is, therefore, affirmed.

D. FREDERICK BURNETT,  
 Commissioner.

Dated: January 9, 1940.

6. NEW LEGISLATION - SIXTH CLASS COUNTIES - RETAIL LICENSES IN CAPE MAY AND OCEAN COUNTIES, IN GOOD STANDING AS OF DECEMBER 20, 1939, ARE CONTINUED IN FULL FORCE AND EFFECT UNTIL JUNE 30, 1940, SUBJECT TO THE LAW, THE REGULATIONS OF THE COMMISSIONER AND THE REGULATIONS DULY PROMULGATED BY THE RESPECTIVE JUDGES OF THE COURT OF COMMON PLEAS - SPECIAL RULING AS TO THE TIME AT WHICH LOCAL ORDINANCES REGULATING LIQUOR TRAFFIC BECOME EFFECTIVE IN THESE COUNTIES.

Assembly Bill No. 6 was approved by Governor Moore on January 11, 1940, and thereupon became Chapter 1, P.L. 1940.

The Act is effective immediately. It becomes inoperative after June 30th next.

It reads:

"AN ACT concerning persons to whom alcoholic beverage licenses were heretofore granted or attempted to have been granted in counties of the sixth class bordering along the Atlantic ocean, and permitting said persons to continue to conduct business until the thirtieth day of June, one thousand nine hundred and forty.

"BE IT ENACTED BY THE SENATE AND GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY:

"1. Any and all persons who, prior to the twentieth day of December, one thousand nine hundred and thirty-nine, obtained a license of any class or description under color of authority of sections 33:1-21 to 33:1-21.2 of the Revised Statutes of New Jersey, to conduct a business pursuant to the provisions of Title 33 of the Revised Statutes of New Jersey in counties of the sixth class bordering along the Atlantic ocean, is and are hereby permitted to continue to conduct said business so attempted to be licensed, to and including the thirtieth day of June, one thousand nine hundred and forty.

"2. This act shall apply only to a person or persons holding such licenses as were neither suspended nor revoked as of the twentieth day of December, one thousand nine hundred and thirty-nine.

"3. That all provisions of law, rules of the Commissioner of Alcoholic Beverage Control and such rules as were attempted to have been promulgated by the respective judges of the courts of common pleas of the counties aforesaid shall remain in full force and effect until the expiration of the provisions of this act; provided, however,

that nothing herein contained shall be deemed to prohibit the commissioner aforesaid from changing and making such rules as he may deem necessary and the powers and duties of said commissioner as to such licensees shall remain as heretofore.

"4. Nothing in this act shall prohibit any person from surrendering any such license or right created by this law, nor shall it prohibit the several municipalities in the counties aforesaid from issuing licenses according to and within all existing limitations of law.

"5. This act shall take effect immediately and shall become inoperative after the thirtieth day of June, one thousand nine hundred and forty.

"Approved January 11, 1940."

This Act obviates the necessity for the special ruling heretofore made in Re McLean, Bulletin 371, Item 1, which is therefore superseded to the extent that it (1) reissued Cape May and Ocean County licenses for thirty days from December 27, 1939, (2) required the further reissuance of such licenses by the local governing bodies within the said thirty days, and (3) continued in effect the County regulations until reenacted or replaced by duly adopted municipal regulations.

It is the fair inference from the language of the Act that the respective County regulations heretofore promulgated shall control the retail liquor business in these Counties down to July 1, 1940, subject, however, to power in the State Commissioner to change and make such rules as may be deemed necessary.

Accordingly, all municipal regulations in these two counties which have been enacted on or since December 20, 1939 or which shall be enacted on or prior to June 30, 1940 are hereby ruled to become effective July 1, 1940, unless, by the terms thereof, made effective on a later date.

Leave is hereby reserved to any municipality which may desire to make its local regulations, in whole or in part, effective at an earlier date than July 1, 1940, to make application to the Commissioner for such purpose.

The Notice to Municipal Clerks of December 29, 1939 (Bulletin 371, Item 11) is not affected by the Act except to the extent that it restates the ruling in Re McLean extending the County regulations pending action by the respective municipalities. It is still essential that each municipality proceed to the consideration and passage of an appropriate ordinance fixing license fees and establishing regulations at once. Notwithstanding that such ordinances will not, in general, become effective until July 1, 1940, it will not do to delay. If licenses are to be issued for the year commencing July 1st next, and renewals are to be out in time for business to continue on July 1st without interruption, local license issuing authorities should be organized and prepared to act by the middle of May and certainly not a moment later than June 1st. The Act expires by its own terms on June 30, 1940 and unless the ordinance is in effect on that date there will be no enforceable regulations or means for the issuance of new or renewal licenses.

As the Act does not require the reissuance of licenses for the current year, the Notice of January 8, 1940 re credit of license fees (Bulletin 373, Item 8) is superseded in its entirety.

The ruling in Re Tanner (Bulletin 373, Item 9) holding Chapter 61, P.L. 1939, which limited the number of licenses in Cape May and Ocean Counties, to be of no further force or effect, is not changed in any way but stands as promulgated.

The ruling in Re Epler, Bulletin 375, Item 2, restating the provisions of Chapter 234, P.L. 1939, which requires that all regulations of the retail liquor business be enacted by ordinance, is not changed in any way and also stands as promulgated.

D. FREDERICK BURNETT,  
Commissioner.

Dated: January 12, 1940.

7. SEIZURES - CONFISCATION PROCEEDINGS - AUTOMOBILE RELEASED BUT OTHER PROPERTY FORFEITED.

In the Matter of the Seizure on	)	Case No. 5584
October 3, 1939, of Amos Barnes'	)	
Plymouth Sedan and a 5-gallon can	)	ON HEARING
of alcohol contained therein, at	)	CONCLUSIONS AND ORDER
or near the intersection of	)	
Blackwood-Sicklerville Road and	)	
Williamstown-Atco Road, in Winslow	)	
Township, County of Camden and	)	
State of New Jersey.	)	
-----	)	

Harry Adler, Esq., Attorney for Amos Barnes.  
Pellegrin & Pellegrin, Esqs., by Franklin E. Pellegrin, Esq.,  
Attorneys for C.I.T. Corporation.  
Harry Castelbaum, Esq., Attorney for the Department of  
Alcoholic Beverage Control.

BY THE COMMISSIONER:

On October 3, 1939, investigators of this Department seized a Plymouth Sedan owned by Amos Barnes and driven by Charles Amos Camper after they found a five-gallon can of alcohol in the car. The can bore no indicia of tax payment and hence the alcohol is prima facie illicit. R. S. 33:1-1(i). No proof to the contrary having been offered, it is determined that the alcohol is unlawful property. Hence, it and the vehicle in which it was being transported are subject to forfeiture. R. S. 33:1-66(c).

At the hearing herein, Amos Barnes contended that his car should not be forfeited because he is entirely innocent of wrongdoing. He testified that he is married, has five children, and has been employed for the past eighteen years by the Point Norris Oyster Company; that he has never been arrested or convicted; that he has known Camper, a fellow-employee, for many years; that on October 3, 1939 he loaned his car to Camper "to take his girl out for a ride." It appears that when Camper was arrested he was accompanied by a young girl. Fingerprint records disclose that Camper has no previous criminal record.

I am satisfied from the evidence that Barnes acted in good faith when he loaned his car to Camper and that he had no reason to suspect that it might be used for illegal purposes.

C. I. T. Corporation appeared by its attorneys and contended that it has a valid lien on the Plymouth Sedan. It has established to my satisfaction that on August 12, 1939 it purchased from the vendor the conditional sale contract covering said car for the unpaid balance of \$653.04; that it has received from Barnes only one payment of \$27.21 thereon; that before purchasing the contract it contacted the person who had sold the car to Barnes and also contacted another company which had financed a car which Barnes used as trade-in value in purchasing the Plymouth Sedan; that it verified the information which it had received as to Barnes' residence and employment and that it had no reason to suspect that the car would be used for unlawful purposes.

I am thus satisfied from the evidence that the finance company acted in good faith, made reasonable inquiry before purchasing the conditional sale contract, and had no knowledge of such facts as would lead a person of ordinary prudence to discover that the car might be used for unlawful purposes. Hence, I shall allow its lien upon payment of the costs of seizure and storage of the car.

Ordinarily, the car would be returned to Barnes but he, through his attorney, has requested me to turn the car over to the finance company in the event that its return should be allowed.

Accordingly, it is ORDERED that the Plymouth Sedan described in Schedule "A" annexed hereto be turned over to C. I. T. Corporation, provided that on or before February 10, 1940 it pays the costs of the seizure and storage of the car; and it is further

ORDERED that the other property described in said Schedule "A" be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, County and municipal institutions or destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,  
Commissioner.

Dated: January 10, 1940.

SCHEDULE "A"

- 1 - 5-gallon can of alcoholic beverages
- 1 - Plymouth Sedan, Serial No. 10836373,  
Engine No. P 8 351396, 1939 New Jersey  
Registration No. ZP 749

8. SEIZURES - CONFISCATION PROCEEDINGS - AUTOMOBILE RELEASED.

In the Matter of the Seizure on )	Case 5612
November 1, 1939 of Fanny Wolf-	
son's Plymouth Sedan and one )	
case of beer found therein in )	ON HEARING
the vicinity of 980 Johnson )	CONCLUSIONS AND ORDER
Place, Union Township, County of )	
Union and State of New Jersey. )	

Scotch & Scotch, Esqs., by Maurice A. Scotch, Esq., Attorneys for Fanny Wolfson and Union Wine and Liquor Store.

Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On November 1, 1939, investigators of this Department seized the Plymouth Sedan described in Schedule "A" annexed hereto and one case of beer, which, it is alleged, was being illegally transported in the sedan. The car was owned by Fanny Wolfson and was being driven by her son, Paul Wolfson.

Fanny Wolfson waived notice of hearing and publication as to forfeiture of her car, which is the only matter considered herein.

At the hearing, it was stipulated that on the date of the seizure, Paul Wolfson was employed as manager by Union Wine and Liquor Store, holder of license D-8 issued by the Township of Union; that at the time of the seizure he was transporting a case of beer from the licensed premises for delivery at 980 Johnson Place in his mother's car, which bore no transportation insignia and was not licensed to transport alcoholic beverages. I find that the car is unlawful property and is subject to forfeiture. R. S. 33:1-66(c).

At the hearing, Paul Wolfson testified that Union Wine and Liquor Store had owned a truck duly licensed to transport alcoholic beverages until May 1939, when it disposed of the truck; that since May 1939 he made occasional deliveries in the Plymouth sedan. As to the owner of the car, it appears that payment of a fee for a special permit to validate the unauthorized transportation would seem to be a sufficient punishment.

Disposal of the beer owned by the licensee will be determined in a separate proceeding and disciplinary proceedings against the licensee for permitting the unlawful transportation will be recommended.

Accordingly, it is ORDERED that the Plymouth Sedan be returned to Fanny Wolfson provided that, on or before the 10th day of February, 1940, she pays the costs involved in the seizure and storage thereof and completes all steps necessary to obtain a special permit to validate retroactively the unlawful transportation and pays the fee therefor, which will be Twenty-five Dollars (\$25.00).

Dated: January 10, 1940.

D. FREDERICK BURNETT, Commissioner.

SCHEDULE "A"

1 - 1936 Plymouth Sedan,  
Body No. 805-13246, Serial No. 2867474,  
Engine No. P-2357278, 1939 New Jersey  
Registration No. JP 45 V.

9. COURT DECISIONS - NEW JERSEY SUPREME COURT - KLAPPROTT v.  
BURNETT, COMMISSIONER.

AUGUST KLAPPROTT,	)	
	)	
Applicant,	)	
	)	
-vs-	)	ON APPLICATION FOR
	)	WRIT OF CERTIORARI.
	)	
D. FREDERICK BURNETT, Commissioner	)	
of Alcoholic Beverage Control,	)	
	)	
Respondent.	)	
-----	)	

Paterson, November 4, 1939

Before:

HON. HARRY HEHER,  
Supreme Court Justice.

Appearances:

For the Applicant: ANTHONY J. ARMORE, Esq.  
For the Respondent: EMERSON A. TSCHUPP, Esq.

THE COURT: I haven't any difficulty at all with this question. I see no debatable issue. If the Commissioner had misapprehended the law and there was a fairly debatable question as to whether or not he had, for instance, as to the location of the licensed place with respect to a church or school, and he read it one way and the applicant said the law meant something else, and the conclusions of the Commissioner clearly indicated that if he were not under what might be a misapprehension of the law he would have granted the license, I think that there a question of law might be presented, but here I find no such question. The Commissioner in findings that are quite extensive demonstrates that in his judgment the public interest will not be served by the continuance of a liquor license on these premises, that is, the license granted to this particular applicant, and I think that all these questions about the constitutionality of the statutes relating to the wearing of military uniforms of a foreign power, and hate, and what-not are beside the point. This was a discretionary authority vested in the Commissioner and I see no reason to question his exercise of it, so I deny the application.

10. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary )  
 Proceedings against )  
 )  
 THEODORE JANULIS, )  
 381 Springfield Avenue, )  
 Newark, New Jersey, )  
 )  
 Holder of Plenary Retail Distri- )  
 bution License D-69, issued by )  
 the Municipal Board of Alcoholic )  
 Beverage Control of the City of )  
 Newark. )  
 - - - - - )

CONCLUSIONS  
AND ORDER

Theodore Janulis, Pro Se.

Charles Basile, Esq., Attorney for the State Department of  
Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee has pleaded guilty to a charge of selling liquor at less than the Fair Trade price at the licensed premises on December 8, 1939, in violation of Rule 6 of State Regulations No. 30.

The usual penalty for this violation is ten days.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for five (5) days instead of ten (10) days.

Accordingly, it is, on this 10th day of January, 1940,

ORDERED, that Plenary Retail Distribution License D-69, heretofore issued to Theodore Janulis by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of five (5) days, effective January 14, 1940 at 3:00 A. M.

D. FREDERICK BURNETT,  
Commissioner.

11. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES - SECOND OFFENSE.

In the Matter of Disciplinary Proceedings against )  
 )  
 JOSEPH GLEESON, )  
 544 and 546 Park Avenue, )  
 Weehawken, New Jersey, )  
 )  
 Holder of Plenary Retail Distribution License D-1, issued by )  
 the Township Committee of the )  
 Town of Weehawken. )  
 ----- )

CONCLUSIONS AND ORDER

Norman R. Wynne, Esq., Attorney for Defendant-Licensee.  
Charles Basile, Esq., Attorney for State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads non vult, with an explanation, to the charge that on November 21, 1939 he sold one-fifth gallon bottle of "Windsor Straight Bourbon Whiskey" below the minimum retail (Fair Trade) price, in violation of State Regulation No. 30.

On the day in question, Investigators Flynn and King of this Department purchased the bottle of whiskey for \$1.40, from the licensee in person, at the licensed premises. The Fair Trade price was \$1.50.

The licensee claims that he was confused and made an honest mistake. He says that a fifth gallon bottle of two year old "Windsor Straight Bourbon Whiskey" was previously listed for \$1.40, while the three year old was \$1.50; that when the Fair Trade price of the two year old was increased to \$1.50, he crossed out the item from his old price list but neglected to remove the \$1.40 price tag from the window, and sold it at that price through error. The price tags on the pints, however, were properly changed.

The licensee is strictly accountable for sales below Fair Trade prices. Carelessness in arranging his price tags confers no immunity. Moreover, his story has the familiar hollow ring. Once before he told a similar story when, soon after the first Fair Trade prices were issued, he was caught selling liquor below the fixed minimum Fair Trade price (Bulletin 284, Item 7).

Ordinarily a guilty plea will merit consideration in imposing the penalty. However, it must be an out and out admission of guilt. Here there was no such admission. Instead, the licensee sought to "explain." This necessitated the taking of testimony, and since the explanation has no substantial merit, the full penalty will be imposed. (Cf. Bulletin 353, Item 8).

As this is the licensee's second offense, the usual penalty of ten days will be doubled. Two strikes, Mr. Gleeson! Next time you're out!!

Accordingly, it is, on this 10th day of January, 1940, ORDERED that Plenary Retail Distribution License D-1, heretofore

issued to Joseph Gleeson by the Township Committee of the Town of Weehawken, be and the same is hereby suspended for twenty days, effective January 14, 1940, at 2:00 A. M.

D. FREDERICK BURNETT,  
Commissioner.

12. ENTERTAINMENT - PHOTO ELECTRIC RIFLE RANGE - PAGE THE HOME GUARD!

January 11, 1940

Mr. Bronislaw Janiszewski,  
Jersey City, N. J.

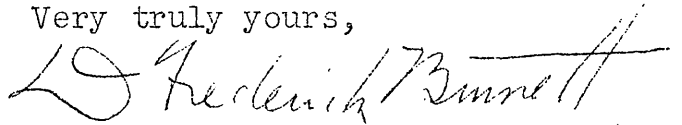
My dear Mr. Janiszewski:

I have before me your letter of January 8th enclosing advertisement describing Seeburg Multi Ray-O-Lite Rifle Range.

From the description of the machine it appears to be a photo-electric rifle range similar to the Tom Mix Radio Rifle described in Re Hanks, Bulletin 204, Item 5.

It may be installed on licensed premises so long as it is not used for gambling and no gambling is permitted.

Very truly yours,



Commissioner.

New Jersey State Library

